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LAW OFFICES

COHN AND MARKS

STANLEY S. NEUSTADT
STANLEY B. COHEN
RICHARD M. SCHMIDT, JR.
JOEL H. LEVY
ROBERT B. JACOBI
ROY R. RUSSO
RONALD A. SIEGEL
LAWRENCE N. COHN
RICHARD A. HELMICK
WAYNE COY, JR.

MARK L. PELESH
J. BRIAN DE BOICE
ALLAN ROBERT ADLER

OF COUNSEL
MARCUS COHN
LEONARD H. MARKS

SUSAN V. SACHS
JOHN R. PRZYPYSZNY
MELINDA S. LITTELL

SUITE 600
1333 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20036-1573

TELEPHONE (202) 293-3860
TELECOPIER (202) 293-4827

DIRECT DIAL: (202) 452-4811

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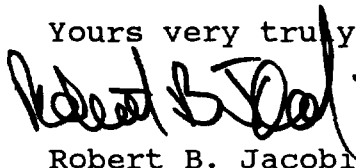
BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Mr. Caton

On behalf of Golden Orange Broadcasting, Inc., licensee of Television Station KDOC-TV, Anaheim, California, there is herewith transmitted in quadruplicate "Comments" responsive to the Commission's Notice of Inquiry (MM Docket No. 93-254) pertaining to the proposed reestablishment of commercial limits by television broadcast stations.

Yours very truly



Robert B. Jacobi

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

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In the Matter of)
Limitations on Commercial)
Time on Television)
Broadcast Stations)
To: Chief, Mass Media Bureau)
_____)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 93-254

COMMENTS

Golden Orange Broadcasting, Inc., licensee of television station KDOC-TV (hereinafter "KDOC-TV" and/or "Station"), Anaheim, California, submits these Comments in response to the Commission's Notice of Inquiry concerning the proposed re-establishment of limits on the amount of commercial matter broadcast by television stations. For the reasons set forth below, KDOC-TV opposes any efforts to re-impose or impose commercial limits on broadcasters.

I. Introduction

Station KDOC-TV is an independent UHF station licensed to Anaheim, California. The Station broadcasts a wide range of programming, including local public affairs, news, entertainment, religious, foreign language programs and "infomercials." In these Comments, KDOC-TV urges the Commission to refrain from re-imposing upon broadcasters commercial limits for several reasons.

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Primarily, restricting the amount of commercial matter aired by broadcasters raises constitutional questions and disregards the public interest benefits flowing from the broadcast of program-length sales presentations, which are frequently of an issue-oriented nature. In addition, while it is true that circumstances in the industry have changed since the Commission abandoned commercial limitations in 1984, the changes all indicate that communications media have become more competitive. Re-imposing artificial limitations on the amount of commercialization is unnecessary in light of the numerous audio-visual options available to television viewers today; however, if the Commission somehow determines that such regulations are warranted, it should make them as flexible and non-burdensome as possible.

II. Restricting Commercial Matter Would Disregard the Benefits to the Public Interest Provided by "Infomercials" and Would Be of Questionable Constitutional Validity

A. **Infomercials Serve the Public Interest**

Infomercials frequently provide viewers with information concerning products and services which enhance their lives. For example, Station KDOC-TV has broadcast infomercials featuring fitness equipment, health aids, diet and beauty aids, and home business products. Other infomercials provide information about personal financial planning, legal services, investment in real estate, and political issues. Programs promoting such products and services are geared toward the viewer's health and well-being, as well as the vending of consumer goods.

Many infomercials presented by Station KDOC-TV address issues of concern to the viewing community, such as health; budgeting, business and finance; politics and elections; and consumer issues. Infomercial programming serves the public interest by responding to these and other issues -- which have been identified through the station's ascertainment efforts. Infomercials (albeit, not in the more traditional manner) supplement and enhance Station KDOC-TV's (and broadcasters' generally) issue oriented programming in accordance with FCC rules and policies. See 47 C.F.R. § 3526(a)(8)(i).

Moreover, broadcasters with traditional formats such as Station KDOC-TV also tend to have quality standards concerning the type of infomercial they will accept and at what times of day they will air infomercials.^{1/} In contrast to home shopping type stations where the programming is primarily geared to full time vending and virtually any advertisement is accepted, many traditional stations selectively use infomercials only to supplement other programming. Handled in this manner, infomercials provide viewers with the public interest benefits of access to a wide variety of life-enhancing products and services, along with

^{1/}Station KDOC-TV requires that infomercials meet broadcast quality standards (i.e., no nudity or offensive language, no sexually explicit or overtly violent programming) and no programs are accepted which contain any inflammatory or demeaning portrayal on the basis of race, religion, political affiliation, ethnicity, gender, sexual preference or handicap. Infomercials may only air during the late-night or early morning on weekdays and during certain periods during weekends.

informational programming responsive to community interests and concerns.^{2/}

The Commission recently held that so-called home shopping formatted stations serve the public interest, convenience and necessity for purposes of the 1992 Cable Act, 47 U.S.C. § 533(g). See Report and Order in MM Docket No. 93-8 (Home Shopping Station Issues), 8 F.C.C. Rcd. 5321, 5328 (1993). In that decision, the Commission determined that such stations provide an important service to viewers who either have difficulty obtaining or do not otherwise wish to purchase goods in a more traditional manner. Id. at 5327. The record showed that home shopping stations

provide valuable services to the disabled and others confined to their homes, the elderly, families without time to shop by other means, people without ready access to retail outlets or whose outlets do not stock the goods they want, people without cars or other transportation, people who dislike shopping, and people who are afraid of violent crime in conventional shopping areas.

Id. The program-length commercials aired by broadcasters whose formats are not predominantly utilized for sales presentations likewise provide viewers with a convenient alternative to "traditional shopping."

^{2/}In addition, infomercials produce revenue which broadcasters use to finance less lucrative programming, such as public affairs and news. The loss or reduction of commercial matter may make it difficult for stations to continue current levels of public affairs and news programming. In the case of Station KDOC-TV, infomercial revenue amounts to about one-third of the Station's total income. These monies have enabled the Station to undertake preparations for a new local news program to supplement CNN news currently carried by KDOC-TV. The elimination or limitation of infomercials from the Station's program line-up would adversely impact upon the Station's plans for a local news program, and, indeed, possibly adversely affect existing non-entertainment programming.

A one-sided parochial view of infomercials (viewed only from the context of a home shopping type format devoted to full-time vending) is neither pragmatic nor realistic. The public interest benefits of infomercials are clear: infomercials convey information about life-enhancing products and services, address issues of community concern, provide an alternative to traditional shopping, and afford stations such as KDOC-TV additional revenue to finance non-entertainment programming.

B. Commercial Speech is Constitutionally Protected

The constitutional and philosophical arguments against regulating commercial matter are also compelling. As the Commission itself recognized in its Notice of Inquiry, governmental distinctions between commercial and noncommercial speech are diminishing in importance, in light of a recent Supreme Court decision. See Notice of Inquiry in MM Docket No. 93-254 at n.16; City of Cincinnati v. Discovery Network, Inc., No. 91-1200, 61 U.S.L.W. 4272 at 4274-4275 (U.S. March 24, 1993). Even if the commercial speech the FCC seeks to regulate is considered "core" commercial speech (that is, speech that does no more than propose a commercial transaction^{3/}), such speech still enjoys First Amendment protection. Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 761 (1976).

The Supreme Court recently reaffirmed the importance of commercial speech in Edenfield v. Fane, 113 S.Ct. 1792, 1798 (1993):

^{3/}Bolger v. Youngs Drug Products, 463 U.S. 60, 66 (1983).

The commercial marketplace, like other spheres of our social and cultural life, provides a forum where ideas and information flourish. Some of the ideas and information are vital, some of slight worth. But the general rule is that the speaker and the audience, not the government, assess the value of the information presented. Thus, even a communication that does no more than propose a commercial transaction is entitled to the coverage of the First Amendment.

Id. at 1798 (citing Virginia Pharmacy Board, supra) (emphasis added).

A four-part analysis applies to governmental regulation of commercial speech: the speech must involve lawful activity and not be misleading, the asserted government interest must be substantial, and any limits on speech may be no more extensive than necessary to serve the public interest. Central Hudson v. Public Service Comm'n of N.Y., 447 U.S. 557, 565 (1980). It is not clear what legitimate, substantial government interest would be served by restricting public access to truthful, informative commercial speech concerning lawful activities and goods. Furthermore, it would be premature to pass judgment on whether the FCC could narrowly tailor its regulations to satisfy constitutional standards.^{4/} But even if the Commission can craft regulations so that a "reasonable fit" is achieved, it must still meet the requirement that the regulations be content-neutral.^{5/} Singling

^{4/}See Board of Trustees of State Univ. of New York v. Fox, 492 U.S. 469, 480 (1989).

^{5/}See Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989) (quoting Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293 (1984)).

out commercial speech, however, would manifest an utter disdain for the requirement of content-neutrality.

III. Growth of Competition in the Communications Industry Demonstrates that Re-Regulation of Commercial Matter is Unnecessary

In 1984, the FCC determined, when it deregulated commercial television, the appropriate level of commercialization on television should be left to the marketplace. After analyzing the effects of its earlier policy of regulating the amount of commercial matter broadcast by television stations, the Commission concluded that the public interest would no longer be served by routinely reviewing the programming, levels of commercialization, and the formal ascertainment practices of television licensees when renewals were uncontested. Report and Order in MM Docket No. 83-670 (Television Deregulation), 98 F.C.C.2d 1076, 1077 (1984). With respect to the matter of commercialization, the Commission said that it was "convinced that commercial levels will be effectively regulated by marketplace forces." Id. at 1105.

Since 1984, significant changes in the marketplace have occurred. Indeed, these "marketplace forces" are stronger today than they were in 1984; television broadcasters compete not only with each other (as was primarily the case in 1984), but with a plethora of other audio-visual media for viewers. In the near future, cable television viewers will be able to choose among hundreds of channels, permitting them to select among offerings with a wide range of commercial content, styles and subject matter.

Such increased competitiveness will force "over-the-air" broadcasters (such as KDOC-TV) to become more competitive as well, airing programming (infomercial or otherwise) subject to the marketplace dynamics. In short, the increased competition in the marketplace empowers the viewer; a viewer can reject a selection it feels has an excess of commercialization with a simple click of the remote control.

The reasons for abandonment of the 16-minute commercial limit in 1984 remain valid reasons to reject commercial limits today. At that time, the Commission was concerned that the guideline posed a potential competitive disadvantage to stations that sought to air "innovative and detailed" commercials, as well as to "the natural growth and development of broadcast television as it attempts to compete with future video market entrants." Television Deregulation Report and Order, 98 F.C.C.2d 1076 at 1104. These dangers to innovation and competition inherent in commercial matter regulation still exist today, and such regulation is even less necessary in today's highly competitive communications environment than it was ten years ago.

Still another reason militating against federally-imposed restrictions on television station commercial content is that such restrictions would unfairly inhibit the ability of broadcasters to compete in the continuously expanding communications marketplace. Cable systems and other programming providers on the developing "information highway" present commercial matter without being subject to quantitative commercial regulation; imposing limits upon

one medium and not the others would be fundamentally unfair. At a time when competition in the communications industry is thriving, artificial commercial limitations are unnecessary and counterproductive.

IV. If Commercial Content is Re-Regulated by the FCC, the Rule Should be as Flexible as Possible

If the Commission decides that commercial limitations on television broadcasters are warranted, it should adopt a flexible rule which imposes only a minimal burden on broadcasters. Specifically, the limits should apply over a lengthy period of time (e.g. a specified number of hours per month rather than per hour) so that program-length sales presentations would be permissible. This ensures that products and services whose features require a thorough explanation will continue to have access to an extended time period format.

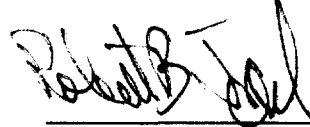
In addition, if commercial limits are adopted, compliance should be monitored by licensee certification similar to the method currently employed for the monitoring of commercial matter broadcast during children's programming. The maintenance of advertising logs is an undue burden on broadcasters and would present the Commission with the enormous administrative task of sifting through large amounts of documentation at renewal time.^{6/}

^{6/}See Television Deregulation Report and Order, 98 F.C.C.2d at 1106 (dispensing with program log requirements due, in part, to fact that requirements constituted the largest government burden on business in terms of total hours).

V. Conclusion

For the reasons set forth above, Station KDOC-TV urges the Commission to refrain from imposing any commercial limitations upon broadcasters. In the alternative, if the Commission determines such limitations to be necessary, it should exempt certain broadcasters from the restrictions, and the regulation should be crafted to be as flexible as possible.

Respectfully submitted



Robert B. Jacobi
Melinda S. Littell

Cohn and Marks
Suite 600
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
(202) 293-3860

Counsel for Golden Orange
Broadcasting, Inc.

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